IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

Habeas Corpus Petition No.1449 of 2007

Rajkumar @ Ramboo .. Petitioner

Vs

1. The State of Tamil Nadu
   by its Secretary to Government
   Home, Prohibition and Excise Department
   Fort St. George, Chennai-600 009.

2. The Commissioner of Police
   Greater Chennai,
   Egmore, Chennai 600008. .. Respondents

Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.M.N.Balakrishnan

For Respondents: Mr.N.R.Elango
Addl. Public Prosecutor

O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

The petitioner - detenu was incarcerated by order dated 23.3.2007 of the second respondent under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a Goonda and confined at Central Prison, Chennai.

2. Challenging the detention order, the detenu has come forward with the above writ petition seeking to call for the records in connection with the order of detention made in proceedings No.109/BDFGISSV/2007, dated 23.3.2007, to set aside

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the same and to direct the respondents to produce him before this Court and set him at liberty.

3.1. The order of detention dated 23.3.2007 came to be passed based on the ground case said to have taken place on 9.3.2007 at about 9.30 hours, registered on the basis of the complaint lodged by one Ajas Basha before the Inspector of Police, F2 Egmore Police Station. On 9.3.2007, the complainant was returning home after doing his work. When he was crossing Gandhi Irwin Bridge junction, the detenu is alleged to have wrongfully restrained him at the knife point and voluntarily inserted his hand into the shirt pocket of the complainant and took away a sum of Rs.5000/- and also snatched his gold chain and ran away from the spot. The complainant raised hue and cry. At that time, the police personnel attached to F2 Egmore Police Station, who were on rounds, came to the spot and tried to apprehend the detenu at the spot. On seeing the police personal, the detenu threatened them at the knife point by uttering filthy words and also pelted stones on them. The public apprehending danger to their lives ran for safety, shop vendors closed the shops and the entire traffic came to standstill causing insecurity in the minds of the public. However, the police personnel apprehended the detenu and registered a case in Crime No.492 of 2007 for the offences punishable under Sections 341, 336, 397 and 506(ii) I.P.C. and remanded him to judicial custody.

3.2. On being satisfied that the detenu had acted in a manner prejudicial to the maintenance of public order and after taking into consideration the six adverse cases registered against the detenu, viz., Crime Nos.980/99, 139/2000, 961/2006, 424/2007, 486/2007 and 476/2007 for the offences punishable under Sections 454, 380, 461, 379, 384 and 392 IPC, the impugned detention order was clamped on the detenu.

4. The learned counsel for the petitioner challenges the impugned order of detention on the ground of non application of mind on the part of the detaining authority, as the detaining authority had not taken note of the fact that the sponsoring authority while making remand requisition before XIV Metropolitan Magistrate, Chennai-8, referred to adverse case Nos.4 and 6 in Crime Nos.424 and 476 of 2007 and also the ground case in Crime No.492 of 2007, but, however, remand order was passed only in respect of the ground case.

5. On examining the records, we find that, while making remand requisition before the learned XIV Metropolitan Magistrate, Egmore, the Sponsoring Authority referred to adverse case Nos.4 and 6 in Crime Nos.424 and 476 of 2007 and also the ground case in Crime No.492 of 2007, however, remand order was passed only in respect of the ground case. Apart from that, the detention order

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states that there is real possibility of the detenu coming out on bail by filing bail application, while the fact remains that there are no details available on record to show whether or not the detenu was remanded in respect of those adverse cases also by independent orders of the Magistrate. Therefore, we are of the view that the subjective satisfaction arrived at by the detaining authority is vitiated as a result of non-application of mind on the part of the detaining authority to the above fact. Consequently, the impugned order of detention is liable to be quashed .

Accordingly, the Habeas Corpus Petition is allowed and the order of detention passed by the second respondent in the proceedings dated 23.3.2007 against the detenu is quashed the and the detenu is directed to be set at liberty forthwith from custody unless he is required in connection with any other case or cause.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

To

1. The Secretary to Government
   Prohibition & Excise Department
   Secretariat, Chennai 9.

2. The Commissioner of Police
   Greater Chennai
   Egmore, Chennai-8.

3. The Superintendent
   Central Prison, Puzhal,
   Chennai-66

4.The Joint Secretary to Government,
Public (law and order)
Fort St.George,Chennai-9

5. The Public Prosecutor
   High Court, Madras.

one cc to Mr M.N.Balakrishnan,Advocate Sr No. 72928

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